

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ROBERT BITTINGER,	§	
	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO. H-10-1745
	§	
WELLS FARGO BANK NA, <i>In Its</i>	§	
<i>Name and as Trustee for the Certificate</i>	§	
<i>Holders of Soundview Home Loan Trust</i>	§	
<i>2007-OPTI, Asset-Backed Certificates</i>	§	
<i>Series 2007-OPTI, et al.,</i>	§	
	§	
Defendants.	§	

ORDER

Robert Bittinger has moved for an extension of time in which to file a motion for a new trial under Federal Rule of Civil Procedure 59(b). (Docket Entry No. 60). According to Bittinger, an extension is needed because:

Bittinger has newly discovered evidence from numerous state and federal agencies that supports his case, and this evidence was not readily available prior to the judgment. This evidence includes, but is not limited to, several emails from state and federal agencies as well as a letter from the OCC (Office of the Comptroller of the Currency) in support of his case. Additional time is requested to thoroughly accumulate, review, organize, and present the new evidence for this Court.

(*Id.*, ¶ 4).

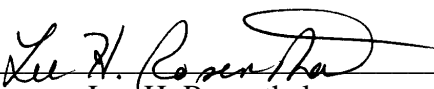
Because final judgment has issued, (Docket Entry No. 59), Bittinger does not need Rule 59 to obtain the relief he seeks. Rather, he can file a motion for relief from judgment based on newly discovered evidence under Rule 60(b) and explain why, with reasonable diligence, he could not have

discovered the evidence “in time to move for a new trial under Rule 59(b)[.]” FED. R. CIV. P. 60(b)(2).

Although Bittinger is free to file a Rule 60(b) motion, this court has previously considered and denied two prior motions, (Docket Entry Nos. 22, 58), that appear to have similar bases. One of those motions was based on “newly discovered evidence” that was irrelevant to Bittinger’s claim. (*See* Docket Entry No. 58, at 4). Bittinger is admonished that if he reasserts the same arguments, he may be exposed to sanctions for abusing the judicial process. *See Howard v. St. Germain*, 599 F.3d 455, 458 (5th Cir. 2010) (per curiam).

Bittinger’s motion for an extension of time, (Docket Entry No. 60), is denied.

SIGNED on December 8, 2011, at Houston, Texas.



Lee H. Rosenthal
United States District Judge